

REMARKS

I. Support for Amendments

The amendment to claim 1 is fully supported by the specification at Fig. 3 and ¶¶[0043], [0044].

II. Rejection Under 35 U.S.C. § 102

Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,488,492 to Adams *et al.* ("Adams").

The Applicant submits that the rejection of claims 1, 2, 4 and 5 is moot in light of the amendments above. Specifically, independent claim 1 has been amended to recite, in relevant part:

...a lock lever rotatably mounted on a top side of said igniter body for operation by a user and an igniting lever mounted on a bottom side of said lighter body;

said lock lever capable of rotating in a first direction to lock said igniting lever, said lock lever capable of rotating in a second direction opposite to said first direction to engage said base portion of said rod-like extension to interfere with the rotation of said rod-like extension when the lock lever is operated to release the lock...

In the Office Action, the Examiner rejected the claims by equating Adams' "cam follower 116" with the "lock lever" recited in claim 1, stating:

With respect to claim 1, Adams et al discloses...a lock lever (116) for locking the igniting action, said lock lever capable of engaging said base portion...

See 05/11/2009 Office Action, ¶ 6.¹ In Adams, the cam following 116 is located inside the body of the lighter. See Adams (Fig. 10). The cam follower 116 is distinguishable from the "latch member 34" that is mounted on the top side of the lighter handle. See Adams (Figs. 6 & 10; col. 7, line 66 – col. 8, line 10). Unlike the lock lever in claim 1, the cam follower 116 in Adams is not mounted on top of the lighter for direct operation by a user. While the latch member 34 in Adams, though capable of direct operation by the user, is not capable of rotating in two directions to lock the igniting lever and inhibit rotation of the extension rod. Because Adams does not disclose a lock lever as recited in amended claim 1, Adams does not anticipate claim 1. Accordingly, the dependent claims therefrom are not anticipated as well.

III. Rejection Under 35 U.S.C. § 103

Claims 6-9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Adams in view of U.S. Patent No. 4,352,494 to Wells ("Wells").

For a rejection under § 103(a), the law requires that the scope and content of the prior art be determined; that the differences between the prior art and the claims be ascertained; and that the level of ordinary skill in the art be resolved in order to assess what would, or would not be obvious to a person of ordinary skill in the art. See generally, *KSR v. Teleflex*, 127 S.Ct. 1727 (2007); *Graham v. John Deere*,

¹ It is noted that in the prior Office Action (08/18/2008), the Examiner equated the lock lever with the "hook 62" in Adams, stating that Adams teaches an igniter "provided with a lock lever (62) for locking the igniting action in the free state [col 13, line 3-17]." See 08/18/2008 Office Action, ¶ 4.

383 U.S. 1, 17-18, 86 S.Ct. 684 (1966). The “rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” See MPEP §2142 (citing In re Kahn, 441 F.3d 988 (Fed. Cir. 2006)).

Regarding claim 6, the Examiner noted that Adams “does not disclose a balancing weight, which is understood to hold the rod-like extension in a horizontal position relative to the movement of the ignitor body. Wells teaches a mechanism that uses oppositely positioned weights in a ring-like structure that allows that balancing of a rod-like extension in a horizontal free state [col 5, line 1-46].” See 05/11/2009 Office Action, ¶12. The Examiner concluded that “[i]t would have been obvious to a person of ordinary skill in the art to use counterweights in a ring-like structure to balance an extension in a horizontal position because the technique as known in the art, yielding the predictable result of maintaining an extension in a desired position.” *Id.*

A. Wells is Non-Analogous Art

First, the Applicant submits that it would not have been obvious to combine Adams with Wells because Wells is non-analogous art. Wells is directed to a “Reaction development apparatus” for “[a] physical development and training device to enable a person to practice reaction skills such as jumping, leaping and springing to grasp a ball-like object” (see Wells’ Abstract) in U.S. Class 473/449, which is “For game using field or court having dividing means thereon for separating opponents (e.g., a net used for volleyball, etc.).” Whereas Adams is directed a “multi-mode lighter” in U.S. Class 431/453 for “Combustion”/“Correlation

of Fuel or Power Supply with Component Movements in a Disabling and Enabling Sequence.”

The United States Court of Appeals for the Federal Circuit has stated the analogous-art test requires that the PTO “show that a reference is either in the field of the applicant’s endeavor or is reasonably pertinent to the problem with which the inventor was concerned in order to rely on that reference as a basis for rejection.” See In re Khan, *supra*, 441 F.3d at 987 (citing In re Oetiker, 977 F.2d 1443, 1447 (Fed. Cir. 1992)). References are selected as being reasonably pertinent to the problem based on the judgment of a person having ordinary skill in the art. *Id.* (“[I]t is necessary to consider ‘the reality of the circumstances,’-in other words, common sense-in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor.” (quoting In re Wood, 599 F.2d 1032, 1036 (C.C.P.A. 1979)). In Khan, the Federal Circuit explained that this test begins the inquiry into whether a skilled artisan would have been motivated to combine references by defining the prior art relevant for the obviousness determination, and that it is meant to defend against hindsight. *Id.* (citing In re Clay, 966 F.2d 656, 659-60 (Fed. Cir. 1992)). “The combination of elements from non-analogous sources, in a manner that reconstructs the applicant’s invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness.” Khan, 441 F.3d at 987 (quoting In re Oetiker, *supra*, 977 F.2d at 1447).

Here, Wells is not in the field of the Applicant’s endeavor or is reasonably pertinent to the problem with which the inventors of the invention claimed in claim

6 were concerned. One of the principal object of Wells' invention is to provide "a physical training device for improving the jumping, leaping and ball retrieving reaction skills of persons of all heights, ages and level of abilities. The device is also intended as a coordination and reaction development apparatus, such as hand/eye coordination, for handicapped persons or persons undergoing a program of rehabilitation therapy." See Wells (col. 1, lines 49-55). By contrast, in the present application, "the primary object of the present invention is to facilitate changing the direction in which the rod-like extension is directed with respect to the igniter body to improve the ignitability." See Specification at ¶ [0010]. Therefore, it would not have been obvious to combine Adams with Davini in the manner asserted by the Examiner.

B. The Combination of Adams and Wells Does Not Render Claim 6 Obvious

Second, even if Adams and Wells were combined, the combination would not render the invention in claim 6 obvious.

The Examiner cites to Wells, at col. 5, lines 1-46, for the proposition that it teaches "a mechanism that uses oppositely positioned weights in a ring-like structure that allows that balancing of a rod-like extension in a horizontal free state..." See 05/11/2009 Office Action, ¶12. Wells, at col. 5, lines 1-46, teaches:

The pivot casing 75 supports one proximal end of a primary tubular swing arm 78 of the arm assembly such that rotation of the casing 75 by primary drive shaft 43 causes the primary swing arm 78 to pivot about axis 79 of the primary pivot means 66 for arcuate movement toward and away from the turret arm 64. FIG. 1 shows the primary swing arm 78 having an arcuate path of movement from a substantially right angled phantom line position 78' relative to the turret arm 64 to a

substantially colinear phantom line position 78" relative to the turret arm 64. FIG. 2 shows the primary swing arm 78 pivoted to its downwardly extending storage position in substantial 180.degree. opposed relation to its upwardly extending 78" position of FIG. 1.

As viewed in FIGS. 3 and 5, the secondary drive shaft or train 44 includes a first shaft section 80 having a worm gear 82 in meshed driving relation with the second ring gear 72 for driving a secondary pivot transmission 83 shown in FIG. 6. The gear 72 is journaled on a pivot hub 84 suitably fixed on the interior base wall 69 of gear housing 68 as by welding. FIG. 3 shows the ring gear 72 mounted on one end of a hollow shaft 85 extending on the pivot axis through the hub 73 with the shaft 85 other end supporting a straight beveled gear 86 of the secondary transmission 83 thereon. It will be noted that the pivot casing 75 includes a reduced diameter bearing annulus portion 87 journal supported within the circular open end of the primary gear housing 68.

In FIG. 6 the beveled gear 86 drives a double cone gear 88 of the secondary pivot transmission 83 having an input portion 90 and an output portion 91. The double cone gear 88 is supported on one end of pivot shaft 92 with its axis extending transverse to and intersecting the primary pivot axis 79. The cone gear shaft 92 is journaled in brackets 93 and 94 fixed on base wall 95 of the pivot casing 75. The output portion 91 of the double cone gear 88 drives a single cone gear 96 of a second shaft section 98 of the secondary drive train assembly 44.

The primary pivot casing 75 includes a semi-circular or C-shaped counterweight portion 100 positioned to counterbalance the weight of the articulated arm assembly including primary swing arm 78, by exerting an opposing torque in response to the force of gravity acting on the swing arm assembly.

(emphasis added) Unlike claim 6, which recites that "the rod-like extension is balanced by weights positioned on the ring portion thereof **opposite to each other**, with the center of rotation of the rod-like extension **intervening therebetween** such that said rod-like extension is **held horizontal** in a free state," Wells does not

teach counter-balancing weights with the horizontal arm therebetween. In Wells, the swing arm 78 is not held in the horizontal free state by the C-shaped counterweight portion 100.

Therefore, claim 6 is not obvious over Adams in view of Wells. And the dependent claims therefrom are not obvious as well.

CONCLUSION

The Examiner is respectfully requested to reconsider his position in view of the remarks made herein. It is believed that claims 1-2, 4-6, and 8-9 have been placed in condition for allowance, and such action is respectfully requested.

If the Examiner believes that a telephone or other conference would be of value in expediting the prosecution of the present application, enabling an Examiner's amendment or other meaningful discussion of the case, Applicant invites the Examiner to contact Applicant's representative at (310) 777-8399.

If any additional fees are required as a result of this amendment, or any credit needs to be made for overpayment of fees, the Commissioner is hereby authorized to charge such fees to Deposit Account No. 500703.

Respectfully submitted,

TROJAN LAW OFFICES

By

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